

TO: Public Safety Committee

FROM: Police Chief William Hogan

PREPARED BY: Curtis W. Euler

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RE: Local Law Enforcement Enforcing Immigration

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The law is clear that local law enforcement officers can arrest subjects for felony violations of criminal portions of the Immigration and Naturalization Act (herein "INA"). One type of violation is where a suspect re-enters the U.S. after being deported for a criminal violation. The officer in this situation must have confirmation from INS of the violation before arrest. The second type of criminal violation is when a person is in the process of or conspiring to smuggle, transport and traffic illegal aliens. In both of these situations local law enforcement officers in North Carolina can detain and arrest persons for these violations of the INA criminal law.

In addition, pursuant to 8 USC 1357, local law enforcement officers may detain persons involved in controlled substance violations when the officer has reasonable suspicion that the suspects are illegal aliens. The local law enforcement officer is required to notify the INS immediately to determine the suspects' immigration status.

Furthermore, pursuant to 8 U.S.C. 1357(g) local law enforcement can enter into an agreement with the Attorney General to enforce certain provisions of the immigration laws (commonly known as a "287 program"). Mecklenburg County has entered into such an agreement with the Immigration Service and Homeland Security. Mecklenburg County has 10 deputies who have received training are allowed to run names of detainees in the jail through the INS database. The Sheriff has stated that only persons incarcerated will be run through the system and persons who call the Sheriff for assistance will not be run. In addition, the Sheriff does not go out into the community to run random checks. However all this enforcement is being done with the consent of the Federal Government.

It is important to note that the INA is unclear as to whether local law enforcement officers can detain suspect whom the officer believes are in the United States illegally. The disposition of a person immigration status is handled by a civil process under INA. Normally, due to the complexities of these provisions in the INA, the federal government is responsible for enforcement. The U.S. Attorney General Office has issued conflicting positions on this issue (See 1996 Opinion Letter and 2002 Opinion Letter) and there is no case law to guide police departments. Local law enforcement does not possess clear authority to enforce

these laws and do not have the proper training to enforce said laws. This lack of clear authority increases the civil liability for local government.

Based on discussions with other jurisdictions (i.e. Raleigh, Durham, Chapel Hill, High Point, Durham County), they do not enforce the civil provision of the INA statutes within their communities.